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**Sent:** Wednesday, March 30, 2022 2:58 PM  
**To:** Andrea Hussey <AHussey@leg.state.vt.us>  
**Cc:** Amerin Aborjaily <AAborjaily@leg.state.vt.us>  
**Subject:** follow-up from yesterday

Good afternoon Andrea,

Yesterday I made some verbal comments in response to witness testimony re S. 171 and I thought I would follow up in writing for easy reference. I've also included some additional reference documents (attached) the Committee might find useful.

1. Re the definition of conflict of interest as applied to members of the General Assembly, the definition in S. 171 only applies to legislators when the action in question is not related to a core legislative function or duty, so it does not apply to voting, committee assignments etc..in those cases existing definitions (Mason's, etc) would continue to apply.

2. Re the attorney issues raised by Vince Illuzzi and Evan Meehan.

- a. Mr. Illuzzi suggested there is an exemption for attorneys in S. 171. However, the

- Commission does not interpret S. 171 to exempt attorneys in any way. The only exception

- made for attorneys is a narrow procedural one that comes into play when a conflict of

- interest falls under both the RPC and the Code of Ethics. These would be very rare as the

- focus of the RPC is to regulate the attorney-client relationship, where the Code of Ethics

covers a wide range of government employee behavior unrelated to the attorney-client

relationship. This exception allows attorneys to follow the RPC procedures in those

situations. Attached please find a "quick chart" the Commission developed to give a visual

overview.

- a.
- b. On page 4 there is language stating, "nothing herein shall be interpreted to require lawyers to violate their respective codes of conduct." To clarify, a requirement to follow a higher standard of conduct would not be considered "violating" another code of conduct, we believe this is self-evident, but would be happy to consider clarifying language added to the Code.
- c.
- d. b. The Rules of Professional Conduct for attorneys vs. the Code of Ethics and "inconsistencies" between the two. This was a topic much discussed with the Senate Gov Ops Committee, as there were prior suggestions that the RPC was sufficient to cover attorney conduct. However, as mentioned yesterday, the Commission knows of no other state with a uniform code of ethics that exempts attorneys. Essentially, they run on parallel tracks, not competing tracks. One governs attorneys in their role as an attorney and is concerned with conduct that implicate an attorney's fitness to practice law. The Code of Ethics governs attorneys in their role as a State employee. For example, as an attorney you may be able to accept a gift of \$1000 from your supervisor, under the Code of Ethics, as a government employee, you are not.
- a.
- b. If language in the Code of Ethics were to allow the RPC to have supremacy in any situation where there is an "inconsistency" between the RPC and the Code of Ethics - for example, different gift rules would be an "inconsistency" - this would allow a government attorney to accept a gift of \$1000 when no other category of State employee would be able to do so. Silence on conduct could also be interpreted as an "inconsistency." It would create a vagueness that would also put into question the ability of State government to discipline attorneys in their role as an employee for a

wide variety conduct. This would be contrary to existing rules and regulations, as the judiciary (along with other branches of government) already has a code of conduct, in place since 1998, that covers attorneys in their role as judicial employees, including a disciplinary framework, and it makes no exceptions or mention of the RPC (see attached). The Rules of Professional Conduct themselves reference the requirement for government attorneys to follow other rules re professional conduct, including those related to conflicts of interest (see attached).

3. The language re post-employment restrictions is quite narrow and standard and largely tracks the federal code of ethics, including as applied by the U.S. Department of Justice, the largest employer of attorneys in the world, to DOJ attorneys. The Commission does not believe it is unduly restrictive to attorneys
4. Approved training providers. The judiciary was not initially included as a training provider and was added during one of the last hearings with the Senate Committee. The Commission thinks it would be beneficial to narrow the scope to a specific or central office/entity within the judiciary, which is in line with what was done with the Legislative and Executive branches, to aid in consistency, particularly when it comes to the initial roll out of the required Code of Ethics trainings.

Please let me know if you have any questions, or if there is any other information I can provide.

Thank you!

Best,

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